IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 6TH JUNE 2006 / 16TH JYAISHTA, 1928

MFA.No. 956 of 1997()

OPMV.1472/1992 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THALASSERY

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APPELLANT:

PUTHANPURAYIL ANDRU, S/O.MAYIN,
AGED 65 YEARS, PUTHENPURAYIL HOUSE,
KOTTAYAM MALABAR P.O., KUTHUPARAMBA, KANNUR.

BY ADV. SRI.A.K.SRINIVASAN
SRI.A.S.BENOY
SRI.N.S.MOHAMMED USMAN

RESPONDENTS:

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1. M.BALAN, S/O.KUNHIKANNA,
OWNER OF BUS KLN 430, VALIYA PARAMBATH HOUSE,
KADIRUR, THALASSERY.

2. KOLATH MANOJ KUMAR, S/O.RAVINDRAN,
DRIVER OF BUS KLN 430, KEAKAD HOUSE,
PINARAYI, THALASSERY.

3. UNITED INDIA INSURANCE COMPANY LTD., KANNUR.

BY ADV. SRI.D.S.WARRIER
SRI.GRASHIOUS KURIAKOSE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06/06/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.HEMA, J.

M.F.A.NO. 956 OF 1997

Dated this the 6th day of June, 2006

JUDGMENT

Appellant is the claimant. He filed application under Section 166 of the Motor Vehicles Act, before the Motor Accidents Claims Tribunal, Thalassery, claiming compensation of Rs.75,000/- for the injury sustained by him in a motor accident. The Tribunal found that the appellant sustained certain injuries in a motor accident involving a bus driven by the second respondent, only due to the negligence of the driver of the vehicle. The Tribunal found that the driver, owner and the Insurance Company are jointly and severally liable to compensate the appellant. Compensation was assessed under various heads and a total amount of Rs.10,500/- with 12% interest was directed to be paid. The quantum is challenged in this appeal by the claimant-appellant.

2. Learned counsel appearing for the appellant submitted that the Tribunal has failed to consider pain and suffering suffered by appellant with the injury sustained by him. The Tribunal also failed to even to consider the nature of injury and the consequence of the injury sustained by the appellant. Though the case of the appellant

that he had difficulty to open “the eyes” because of the injury sustained in the motor accident, the Tribunal held in paragraph 13 of the award that the difficulty was for opening of “the mouth”. Reference was made to Exhibit A3, treatment card issued by the department of Neurology, Medical College Hospital, Kozhikode and it was held that the said document reveals that the appellant has difficulty for opening the “mouth”.

3. Learned counsel appearing for the appellant submitted that this is contrary to the evidence and the contents of Exhibit A3. From Exhibit A3 it is evident that the problem was “difficulty in opening eyes”. The case summery details show that there was history of road traffic accident and hospitalisation. It was, therefore, submitted that though there is sufficient evidence to show that the appellant suffered difficulty in opening the eyes in the light of Exhibit A3, the Tribunal ignored this fact while assessing compensation for pain, suffering etc.

4. The Tribunal held that Exhibit A3 does not show that the treatment was as a result of the injuries sustained earlier in an accident which occurred on 12.5.1992. The Tribunal also found that as per Exhibit A3, the accident was one year back on 29.11.1994. Exhibit A3 shows that the date of admission was on 29.11.1994. But it cannot be inferred from Exhibit A3 that the accident was on 29.11.1994. The Tribunal, therefore, committed factual errors in entering findings with respect to the serious problem which is

allegedly suffered by the appellant, consequent to the injury sustained by him in the motor accident. It was also pointed out that the appellant gave evidence that he had some difficulty with the eyes.

5. On going through the oral evidence, I find that the appellant has not clearly stated in his evidence as to what exactly was his problem with the eyes. But at the same time, there are indications in Exhibit A3 and other documents regarding the problem sustained by him, when he was examined with the history of the road traffic accident and hospitalisation. The appellant, however, did not clarify that the subsequent hospitalisation on 29.11.1994 was for treating the same difficulties which he suffered consequent to the injuries, in so many words. I find that an opportunity is to be granted to the appellant to explain the details that the problem which he had to the eyes because of the accident. The findings entered by the Tribunal in paragraph 13 of the award regarding the contents of Exhibit A3, consequence of the injury etc. cannot be sustained in the light of the evidence tendered in this case.

6. Without considering what exactly was the problem and whether the difficulty and the problem suffered by the appellant was as a result of the injury sustained in the accident, it will not be possible for this Court to assess whether the compensation granted for the pain and suffering is proper or not. Therefore, I find that in the interest of justice an opportunity has to be given to the appellant

to adduce further evidence to explain that the problems which he had to the eyes had connection with the injury sustained in the motor accident. If he establishes the same, the Tribunal will consider also, whether he is entitled for pain and suffering.

7. Learned counsel appearing for the appellant also submitted that the Tribunal held that the income was only Rs.500/- per month. Though the appellant's case is that he is a fish merchant, the Tribunal ignored this fact and did not fix the notional income as the income, it is argued. Since I have decided to give an opportunity to the appellant to adduce further evidence, I find that this fact also can be looked into by the Tribunal while passing a fresh award.

In the result, the case is remanded to the Tribunal for fresh consideration and disposal, in the light of the observations made in this judgment. The parties shall appear before the court below on 10.7.2006. Taking into consideration the date of accident and the age of the appellant, the matter shall be disposed of within two months from the date of receipt of a copy of this judgment.

This appeal is allowed.

K.HEMA, JUDGE

vgs.

K.HEMA, J.

M.F.A.NO.956 OF 1997

JUDGMENT

6.6.2006